

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

*Kan Schalk
PL-II*

FILE: B-219998.2

DATE: February 18, 1986

MATTER OF: Integrity Management International, Inc.

DIGEST:

1. Protest that agency's refusal to permit unlimited site visits precludes submission of intelligent proposal is denied where solicitation contains sufficient information to prepare proposals and there is no obligation on the part of the agency to accommodate individual preferences of every prospective offeror by providing unlimited access to facilities for site visitations.
2. Contracting agency has no obligation to compensate for advantages of incumbent, advantages which are not the result of preferential or unfair government action in order to equalize the competitive position of all potential offerors.
3. The use of sealed bidding is not appropriate under the Competition in Contracting Act of 1984 where award will be made on the basis of technical as well as price-related factors.

Integrity Management International, Inc. protests the Army's refusal to allow unlimited access to food service facilities for site visits under request for proposals (RFP) No. DABT51-85-R-0025, which was issued by the Army as part of a cost comparison under Office of Management and Budget Circular A-76 to determine whether mess attendant services at Fort Bliss, Texas, should be contracted out.

We deny the protest.

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The solicitation contained the following clause entitled "Site Visit (Apr. 1984)," as set forth at Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.237-1 (1984):

"Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award."

Immediately following that clause the RFP stated that a preproposal conference and site visit were scheduled on July 25 and 26 at Fort Bliss and provided that the scheduled site visits were to provide offerors "the opportunity to observe the facilities and equipment." In response to requests by Integrity and two other firms to schedule individual visits, the contracting officer determined that no site visits would be allowed except as set forth in the RFP.

Integrity contends that the Army did not comply with the site visit clause because prospective offerors were limited to a brief walk through the areas where services are to be performed. The protester maintains that the site visit clause allows unlimited access by offerors to work areas during meal times so that offerors can "satisfy themselves" as to conditions that may affect performance. There are 19 Fort Bliss dining facilities under the solicitation and, according to the protester, an offeror needs to spend time in each facility during meal periods in order to prepare a proper budget for its proposal.

The Army advises that no individual site visits were scheduled so as to assure that all offerors would view the facilities under the same circumstances and to permit it to provide all questions and answers in writing to all offerors whether or not they attended the visit. The Army also says that individual site visits would interfere with health and safety conditions and that scheduling such

visits would be an unreasonable burden since 88 firms received the solicitation. Finally, the Army maintains that the solicitation contains adequate information to allow offerors to prepare intelligent proposals.

There is no obligation on the part of the agency to accommodate the individual preferences of every prospective offeror by providing unlimited access to facilities for the purpose of site visitations. BECO Corp., B-217573, May 15, 1985, 85-1 CPD ¶ 548. Moreover, the clause in question does not mandate unlimited access as Integrity suggests, but merely urges prospective offerors to inspect the work site so as to avail themselves of reasonably obtainable information that may affect contract performance.

We also note that the protester does not state what kind of information it would gain from unlimited access that is not already available. The solicitation, for instance, contains daily estimates of work volume, hours of operation and detailed serving schedules for each facility. The solicitation also contains sample menus, cleaning and housekeeping schedules and detailed descriptions of other services to be performed by mess attendant personnel. Finally, the solicitation indicates the number and type of feeding lines, such as short order or cafeteria, and for each facility, its feeding capacity and the square footage of kitchen, dining, and storage areas. Based on this information, we do not see how the Army's refusal to allow unlimited site visits affected the protester's ability to prepare an adequate proposal.

Integrity also argues that the Army's restriction of site visits gives the incumbent^{1/} a competitive advantage. A contracting agency has no obligation to compensate for advantages enjoyed by an incumbent, where those advantages are not the result of preferential or unfair government action, in order to equalize the competitive position of

^{1/} Some of the mess attendant services under the solicitation, such as housekeeping, are currently contracted out, while food preparation and serving are currently done in-house by government personnel.

all potential offerors. John Morris Equipment and Supply Co., B-218592, Aug. 5, 1985, 85-2 CPD ¶ 128. Here, the agency has provided a reasonable explanation of its rationale for limiting site visits, and there is no evidence of preferential or unfair government action in favor of the incumbent.

Finally, in a letter received after Integrity had commented on the Army's report, the protester argues that the solicitation should have been "advertised" rather than "negotiated." The protester contends that the use of "negotiated procedures" for food service procurements is inappropriate. As we explain below, we dismiss this issue without requesting a separate report from the Army.

In the past there was a statutory preference for formal advertising; negotiation was authorized only where formal advertising was not feasible or practicable and where one of several other circumstances was present. See 10 U.S.C. § 2304(a) (1982). Our concern when a protester challenged the decision to negotiate was whether the agency had a legally supportable basis for that decision. Saxon Corp., B-216148, Jan. 23, 1985, 85-1 CPD ¶ 87. The Competition in Contracting Act of 1984 (CICA), 10 U.S.C.A. § 2304(a)(2) (West Supp. 1985), however, changed the basis for using formal advertising (now called "sealed bids") as opposed to negotiation (now called "competitive proposals"). Agencies are instructed by CICA to solicit sealed bids if time permits, the award will be based on price, it is not necessary to conduct discussions and there is a reasonable chance of receiving more than one sealed bid. 10 U.S.C.A. § 2304(a)(2)(A). An agency is to request competitive proposals if any of the four listed conditions are not met. 10 U.S.C.A. § 2304(a)(2)(B).

One of the conditions under section 2304(a)(2)(A) is that "the award will be made on the basis of price and other price-related factors." Under the protested solicitation, award will not be based solely on price and price-related factors, but also on technical evaluation factors including management capability, organization and staffing. Integrity does not question the agency's use

of factors other than price. Accordingly, in these circumstances it appears that the Army properly solicited competitive proposals.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel